

qualified. He claims that the Defendant's failure to rehire him was discriminatory based on his age, and was done in retaliation for his prior complaints about racial discrimination. The Plaintiff filed an EEOC charge when it became obvious that the Defendant was not going to re-hire him. He seeks compensatory, punitive, and statutory liquidated damages; costs; attorney's fees;¹ interest; a jury trial; and further relief that the Court deems just and proper.

II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Amended Complaint to determine whether it is subject to dismissal on the grounds that it is "(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see 28 U.S.C. § 1915A (requiring frivolity review for prisoners' civil actions seeking redress from governmental entities, officers, or employees).

In its frivolity review, a court must determine whether a complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). Furthermore, a pro se complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his complaint which set forth a claim that is cognizable under federal law. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

III. DISCUSSION

¹ It is unclear why the Plaintiff is seeking attorney's fees, as he is not currently represented by counsel.

The Plaintiff appears to again assert claims for discriminatory and retaliatory failure to rehire him, based on his age and on complaints about racial discrimination that he asserted shortly before he was laid off from work.² Liberally construing the Amended Complaint and drawing all reasonable inferences in favor of the pro se Plaintiff, the Amended Complaint will be allowed to pass initial review in that it is not plainly frivolous.

IV. CONCLUSION

In sum, the Amended Complaint passes initial review in that the Plaintiff's claims are not plainly frivolous.

ORDER

IT IS, THEREFORE, ORDERED that:

1. The Amended Complaint [Doc. 4] passes initial review.
2. **IT IS FURTHER ORDERED** that the Clerk is directed to mail a summons form to Plaintiff for Plaintiff to fill out and return for service of process on Defendant. Once the Court receives the summons form, the Clerk shall then direct the U.S. Marshal to effectuate service on Defendant pursuant to Rule 4(c)(3). The Clerk is respectfully instructed to note on the docket when the form has been mailed to Plaintiff. All costs of service shall be advanced by the United States. Any recovery in this action will be subject to payment of fees and costs, including service of process fees and the \$405.00 filing fee.

Signed: January 16, 2024



Graham C. Mullen
United States District Judge



² The relevant legal standards are set forth in the Court's Order on initial review of the Complaint. [See Doc. 3].